

CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence is being forwarded to the Examiner via facsimile at 703-872-9094 addressed to:

"Assistant Commissioner for Patents,
Alexandria, VA 22313-1450"

on September 17, 2003.

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09/17/03
Date of Signature

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**ASSISTANT COMMISSIONER FOR
PATENTS**
Alexandria, VA 22313-1450

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Customer No.: 000201

Attorney Docket no.: J6709(C)

Applicant: Goldberg et al.

Serial No.: 09/938,455

Filed: August 24, 2001

For: LAMELLAR POST FOAMING CLEANSING COMPOSITION
AND DISPENSING SYSTEM

Group: 1751
Examiner: C.I. Boyer
Edgewater, New Jersey 07020
September 17, 2003

DECLARATION
Under 37 CFR § 1.732

Assistant Commissioner for Patents
Alexandria, VA 22313-1450

Sir:

I, Philip Edward Miner, hereby declare that:

I am familiar with the rheological measurements discussed in the above-identified application.

I received my Bachelor of Science degree from the University of Rhode Island in Chemistry in the year 1970.

I joined my present employer Unilever in 1975, and I currently have the title Senior Research Biophysicist, in the Brand Development, Skin, Department located in Trumbull, CT.

I am familiar with the Office Action dated June 3, 2003 in the above captioned case where claims 1-19 and 28-36 were rejected under 35 U.S.C. 102(e) as being anticipated by Dixon (US 8,407,044), where claims 1, 2, 4, 5, 8-12 and 28-33 were rejected under 35 U.S.C. 102(b) as being anticipated by Osipow et al. (US 5,308,643), where claims 1-36 were rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (US 5,002,680), and Lyle et al. WO 0039273 ,

The viscosities of all of Dixon's examples are measured *before* the addition of a hydrocarbon propellant and at 25°C with a shear rate of 3.84 sec⁻¹. It is apparent that Dixon cannot anticipate or suggest the instant claims which require the viscosity to be measured *after* the addition of the hydrocarbon propellant and at 4°C with a shear rate of less than 0.25 sec⁻¹. These lamellar materials are non-Newtonian and exhibit non-linear viscosity changes as a function of shear, temperature and formulation. Measurements at one set of conditions are not predictive of results at another set of conditions.

The Examiner made reference to the mousse compositions of Schmidt et al. as anticipating the instant invention. Low viscosity products are employed by one skilled in the art to allow the mousse to properly dispense as an aerosol where the propellant is blended with the product. This is unlike the present case where the propellant is separated by a barrier from the inventive self-foaming composition. In addition to propellant, a small quantity of a gaseous or low boiling material is added to the inventive self-foaming composition to allow self-foaming subsequent to dispensing. Self foaming is not analogous to mousses because of the substantial difference in the rate of foaming and final average bubble volume between the two cases. Self foaming compositions as disclosed in the present invention slowly increase in volume with small average bubble final volume compared to mousse compositions that rapidly increase in volume with a relatively large average bubble final volume.

The Examiner made reference to the self-foaming composition of Lyle et al as anticipating the instant invention. Lyle does explain that, at least for his invention, that the addition of a post foaming agent (hydrocarbon) just prior to sealing ensures that any thickening that occurs does not occur until the composition is in the container. However, Lyle neither quantifies the change in viscosity nor the time it takes for this change to occur. Nor is any mention made of the rheological characteristics of the composition with post foaming agent. For the instant invention

it was discovered that the specific shear thinning nature of the composition with hydrocarbon was critical, not the actual viscosity. Indeed, it was discovered that even high viscosity systems failed.

I declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and may jeopardize the validity of the application or any patent issuing thereon.

Dated: September 15, 2003

By:


Title: SR. RESEARCH PHYSICIST